

REMARKS

Reconsideration and withdrawal of the requirement for election of species are respectfully requested in view of the following remarks.

Pursuant to 37 C.F.R. 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Requirement for an Election of Species by five (5) months, i.e. up to and including May 12, 2003. A check for \$1970 is enclosed with this Amendment. Applicants authorize the Assistant Commissioner to charge any additional fee required for consideration of this Amendment, or credit any overpayment, to Deposit Account No. 50-0320.

Applicants believe that the present election is manifestly unnecessary as the previous election in response to the July 29, 2002 Office Action was sufficient to move this case forward, and Applicants are at a loss as to why prosecution on the merits has not begun. Further, Applicants do not understand why numerous calls by the undersigned to the Examiner inquiring as to the necessity of the election requirement were never returned. Applicants thank Supervisory Examiner Dees for his intervention in this matter.

Claims 1-5, 7-9, and 12-42 are pending. This Amendment simply renumbers claims 31-38 added by the August 27, 2002 Amendment as "35-42" to correct an inadvertent error in numbering the claims.

This Amendment, therefore, adds no new matter.

In response to the previous Requirement for an Election of Species, mailed on July 29, 2002, Applicants elected, with traverse, the species wherein polyurea is the carrier material, fenoxaprop-p-ethyl and isoxadifen-ethyl are the agrochemically active compounds, and fenoxaprop-p-ethyl is surrounded by the carrier material. Applicants believed then, and still

believe now, that the election was sufficient to begin examination of this application on the merits.

In response to the present Requirement for an Election of Species, mailed on November 12, 2002, Applicants elect, with traverse:

- bromoxynil as the hydroxybenzonitrile of claim 18;
- 2,4-D as the aryloxyalkylcarboxylic acid of claim 19;
- sulfotrione as the HPPDO inhibitor of claim 21;
- clethodim as the cyclohexanedione oxime of claim 22; and
- indolyl acetic acid as the growth regulator of claim 23.

Claims 1-5, 7-9, and 12-42 read on the elected species.

Applicants respectfully assert that the present election requirement is unnecessary. As such, Applicants respectfully traverse this requirement for an election of species. The species are each related to one another and directed to the same inventive concept, which may be simultaneously searched. It is Applicants' understanding, however, that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141.


Beyond the election requirement being unnecessary and prejudicial, Applicants further urge that the Requirement is improper as it does not demonstrate that searching all the inventions constitute an undue burden to the Office and because it is contrary to public policy. The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application

can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.* Since the Requirement does not indicate that searching would constitute an undue burden, this requirement is not met.

In view of the foregoing, reconsideration and modification of this Restriction requirement is requested and an early action on the merits is earnestly solicited.

Respectfully submitted,

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